IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.207 OF 2005

Shri Sharad H. Lotlikar,)
Bandora, Ponda Goa.).. Petitioner

Vs.

1. Government of Goa,)
Through it's Chief Secretary,)
Porvorim Goa.)

2. The Registrar of Co-operative Societies,)
Government of Goa,)
Fontainhas, Panaji Goa.)

3. The Asst.Registrar of Co-op.Societies)
(South Zone), Kiran Hall,)
Aquem, Margao Goa.)

4. The Chairman,)
Collem V.K.S.S.Society Ltd.,)
Collem, Goa.).. Respondents

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Shri Mahesh Amonkar, Advocate for the Petitioner.

Shri Guru Shirodkar, Additional Government Advocate for respondent Nos.1 to 3.

Shri A.V.Nigalye, Advocate for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 10TH FEBRUARY, 2006.

ORAL JUDGMENT :

1. Heard the learned advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the judgment and order dated 8th October, 2004 passed by the Registrar of Co-operative Societies, Goa, in Co-operative Revision No.3/2002/RCS. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all those grounds and suffice to refer only one ground viz. the point relating to the failure on the part of the authority to comply with the basic requirement of the principles of natural justice and the rules of procedure before deciding any issue i.e. Failure on the part of the authority to issue notices to the concerned parties and secondly non consideration of the issue of limitation.

3. Upon hearing the learned advocates for the parties and on perusal of the records, it is seen that though the petitioner was undisputedly stated to have been a Loanee in this matter, before proceeding with the matter under Section 100-A of the Maharashtra Co-operative Societies Act, 1960 as application to the State of Goa, hereinafter referred to as “the said Act”, no notice of such proceedings was ever issued to the petitioner before issuance of such certificate. Secondly, even after disposal of the matter and having learnt about the consequences of such certificate having been issued, the petitioner had sought to raise a point of bar of limitation, the

same was not at all considered in accordance with the provisions of law. Reliance is sought to be placed in the matter of Shri O.K. Vasudevan v. The Shri Paras Darshan Co.op.Hsg.Soc.Ltd., reported in 2005(2) All MR 443.

4. Considering the fact that the proceedings under Section 100-A of the said Act are essentially to ascertain the exact amount of liability of a Loanee and it involves not only arithmetical calculations but also involves adjudication of various other issues and even the dispute relating to liability, it is but natural that the Loanee is required to be heard before issuance of a certificate thereunder. Once it is not in dispute that no such notice was issued to the petitioner, the entire proceedings stand vitiated and the notice issued thereafter on the basis of such certificate cannot be sustained nor it can be allowed to be executed. Apparently, this aspect was not at all considered by the lower authority.

5. As regards the point of limitation, the authority ought to have considered that once any issue regarding bar of limitation is raised, it was required to be dealt with in accordance with the provisions of law as applicable to the claim adjudicated upon. As in case of lapse of time and the claim having been filed beyond the

prescribed period, the valuable right is accrued to the otherside. Being so, the point cannot be just ignored in the manner it was dealt with by the lower authority in the impugned order and ought to have been considered in accordance with the provisions of law.

6. For the reasons stated above, therefore, the impugned judgment and order cannot be sustained and is liable to be quashed and set aside as well as the certificate issued by the authority under Section 100-A of the said Act is also liable to be quashed and set aside, and while quashing the same, the matter needs to be remanded to the concerned authority to deal with the same in accordance with the provisions of law and bearing in mind the observations made hereinabove, and after hearing the parties.

5. In the result, therefore, the petition succeeds. The impugned judgment and order as well as the certificate issued by the authority under Section 100-A of the said Act is hereby quashed and set aside and the matter is remanded to the concerned authority to deal with the same in accordance with the provisions of law and bearing in mind the observations made hereinabove, and after hearing the parties. It is made clear that, except the above two points, this Court has not expressed any opinion on any of the issues

sought to be raised by the petitioner in this petition and all the issues are kept open. The rule is made absolute accordingly in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)